

Action mailed September 5, 2002, the Examiner requested a restriction between claims 1-30 (Group I) and claims 31-35 (Group II) prior to examination. The Examiner stated that the inventions disclosed in Groups I and II were distinct.

Applicants provisionally elect to prosecute claims directed to Group 2 (claims 31-35) with traverse. Applicants also respectfully request reconsideration of the restriction requirement.

The Manual of Patent Examining Procedure ("MPEP") explains the requirements for a proper restriction requirement. In particular, the MPEP states:

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (see MPEP Section 806.05 - Section 806.05(i)); *and*

(B) There must be a serious burden on the examiner if restriction is required (see MPEP Section 803.02, Section 806.04(a) - Section 806.04(i), Section 808.01(a), and Section 808.02).

M.P.E.P. § 803 (emphasis added).

The fact that *both* criteria must be satisfied is made clear by the following statement in the MPEP: "If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions." MPEP § 803 (emphasis added)).

Thus, if the subject matter of the pending claims is such that there would be no serious burden on the Examiner to search and examine all of the pending claims at the same time, the Examiner is to do so, *even if* the pending claims are drawn to independent or distinct inventions.

Applicants respectfully submit that the examination of Groups I and II would not place an undue burden on the Examiner. Applicants note the inventions of Group I and Group II, though independently patentable, are closely related such that a prior art

search directed to one group could reveal art directed to both groups of claims. Thus, it is respectfully submitted that the Examination of both Groups would not pose and undue burden on the Examiner.

For at least these reasons Applicants respectfully request reconsideration and withdrawal of the restriction requirement.

CONCLUSION

If any point remains that is deemed best resolved through a telephonic interview, the Examiner is respectfully invited to contact the undersigned attorney.

Respectfully submitted,

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